

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4250 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

CHHAGANBHAI KHIMABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner
MR HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 28-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on eight cases registered against him for the alleged offences of theft of gas cylinders under sections 447, 379 and 114 of the IPC. In all the cases, investigation was going on when the order of detention was passed. Over and above these criminal cases, reliance is also placed on the statements of four witnesses for the incidents which took place on 1-12-97 and 15-12-97 and the concerned witnesses were beaten by the petitioner when they refused to take delivery of the gas cylinders suspecting them to be stolen property. Many persons gathered to witness the said incidents of beating. However, they all started running helter-skelter when the petitioner and his associate rushed towards the crowd with open knife and an atmosphere of fear and terror was created and the even tempo of life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that even if the allegations made against the petitioner are accepted as true for the sake of arguments, the same at best can be treated as breach of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited. The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 28-1-98 is quashed and set

aside. The detenu Chhaganbhai Khimabhai Parmar is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs. Writ to be sent to Junagadh Jail.

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